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**BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, SEPTEMBER 27, 2002
METCALF BUILDING, CONFERENCE ROOM 111
1520 EAST SIXTH AVENUE, HELENA, MONTANA**

9:00 A.M. **The Board will begin its regularly scheduled meeting. The regular agenda will be interrupted for the 9:30 Hearing, and will resume at the conclusion of the hearing.**

HEARING

9:30 A.M. **Water Quality Numeric Standards Rulemaking Hearing**

On July 26, 2002, DEQ requested that the Board initiate rulemaking to set numeric water quality standards for the Tongue River and the Powder River, Little Powder River, Rosebud Creek and their tributaries for electrical conductivity (EC) and sodium adsorption ratio (SAR). The DEQ submitted two proposals.

Prior to the July meeting, T & Y Irrigation Company, Tongue River Water Users Association, Buffalo Rapids Irrigation Project, and Northern Plains Resource Council filed a petition for rulemaking to set numeric water quality standards for EC and SAR. The Board decided to hear the matter.

REGULAR AGENDA

NOTE: *Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting at the time specified. However, the Board might not address the specific agenda items in the order they are scheduled.*

I. ADMINISTRATIVE AGENDA ITEMS

A. Review and approve minutes of July 26, 2002, meeting.

II. BRIEFING AGENDA ITEMS

A. CONTESTED CASE UPDATE

1. Cases assigned to Hearing Officer Kelly O'Sullivan

a. In the matter of applicant **Town of Geraldine's Montana Pollutant Discharge Elimination Permit (MPDES)** No. MT-002-0826, appeal filed by petitioner Town of Geraldine in relation to their wastewater treatment facility discharge permit. The status of this case has not changed since the last Board meeting. The matter has been continued to December 31, 2002.

2. Cases assigned to Hearing Officer Tom Bowe

a. **M&W Investments, Inc.** appealed DEQ's denial of the request for revision of a previous subdivision approval (EQ #02-2146). Early in September, the parties stipulated to dismissal of the appeal with prejudice. M & W Investments has elected to proceed with construction in accordance with the original approval. An order of dismissal will be presented to the Board as an Action Agenda Item.

- b. **M&W Investments, Inc.** appealed two subdivision application non-degradation decisions and a deviation request denial (EQ #01-1457 and #00-1822). In mid-August 2002, the parties stipulated to an extension of the schedule in order to allow for an additional year of water quality monitoring needed to assist in the classification of a wastewater drainfield in the subdivision. Pursuant to the stipulation, Hearing Examiner Tom Bowe extended the schedule for one year, with the hearing set for December 11, 2003.
- c. **Van Dyke Construction Company, Inc. and Loughmiller Reclamation, L.L.C. (BER 2002-07 OC)** requested a hearing to appeal a DEQ proposed civil penalty under the Opencut Mining Act. As agreed by counsel for the parties, on August 30, 2002, Tom Bowe issued an order extending the schedule by two weeks, with the hearing on December 31, 2002.
- d. **Big Bend Ranch Development Company (BER 2002-08 SUB)** requested a hearing to appeal DEQ's denial of a subdivision approval (EQ #02-2273). Tom Bowe issued an order on July 29, 2002, setting the schedule, with a November 6, 2002, hearing date.
- e. **CR Kendall Corporation (BER 2002-09 MM)** requested a hearing to appeal DEQ's decision to deny a minor permit amendment, under the Metal Mine Reclamation Act. CR Kendall and DEQ jointly requested they have until September 30, 2002, to submit a proposed schedule. On August 6, 2002, Hearing Examiner Tom Bowe issued an order granting the request.
- f. In the matter of **Sterling Mining Company's (BER 2002-01 AQ)** Air Quality Permit #2414-01, is a petition by the Montana Environmental Information Center and others challenging the permit, which is related to the Rock Creek Mine in Sanders County, adjacent to the Cabinet Mountains Wilderness. The parties stipulated to dismissal of the Petitioners' constitutional claims. Hearing Examiner Tom Bowe conducted a hearing on August 30, 2002, on the Petitioners' motion for summary judgment and on DEQ's motion to dismiss the Petitioners' claim under the Montana Environmental Policy Act (MEPA). Tom Bowe issued proposed decisions on September 5, 2002, recommending that DEQ's motion to dismiss MEPA claim be granted and recommending that the Petitioners' motion for summary judgment be denied. The Board will consider whether to approve or disapprove these rulings as Action Agenda Items.
- g. **Westmoreland Resources, Inc. (WRI) (BER 2002-04 MSUMRA)** requested a contested case hearing under the Strip and Underground Mine Reclamation Act. WRI disputes both whether alleged violations of the reclamation requirements occurred and the proposed penalty. The status of this case has not changed since the last Board meeting. The hearing is set for December 10-11, 2002.
- h. **Vicky A. Randolph (BER 2002-05 SUB)** requested a hearing under the Sanitation in Subdivisions Act to appeal an amended administrative compliance order, issued by DEQ, pertaining to the Randolph Manor Subdivision in Hill County. During the prehearing conference on August 21, 2002, counsel for the parties stipulated to dismissal of the contested case without prejudice. An order for dismissal will be presented to the Board for approval as an Action Agenda Item.

III. ACTION AGENDA ITEMS

A. ACTION ON APPEALS:

1. In the matter of **Vicky A. Randolph (BER 2002-05 SUB)**, an order for dismissal without prejudice will be presented to the Board for approval.
2. In the matter of **M & W Investments, Inc.**, appeal of DEQ's denial of the request for revision of a previous subdivision approval (EQ #02-2146), an order for dismissal with prejudice will be presented to the Board for approval.
3. In the matter of **Sterling Mining Company's Air Quality Permit #2414-01 (BER 2002-01 AQ)**, the Board will consider whether to approve or disapprove the proposed decision of the hearing examiner, who has recommended that the Petitioners' MEPA claim be dismissed without prejudice because the Board lacks subject matter jurisdiction.
4. In the matter of **Sterling Mining Company's Air Quality Permit #2414-01 (BER 2002-01 AQ)**, an order for dismissal without prejudice of Petitioners' constitutional claim will be presented to the Board for approval.
5. In the matter of **Sterling Mining Company's Air Quality Permit #2414-01 (BER 2002-01 AQ)**, the Board will consider whether to approve or disapprove the proposed decision of the hearing examiner, who has recommended that the Petitioners' motion for summary judgment be denied.

B. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES:

1. In the matter of the amendment of ARM 17.8.505, 17.8.510 and 17.8.514 pertaining to air quality operation fees, annual review of air quality permit fees, and open burning fees. Presiding Officer Tom Bowe conducted the public hearing on July 30, 2002. The public comment period ended August 6, 2002. No oral or written comments were received from members of the public. DEQ recommends adoption of the proposed rule amendments.

C. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

The Department will propose that the Board concur in its recommendation to initiate rulemaking to:

1. In the matter of the amendment of DEQ Circular WQB-7 to include a human health standard for Bromoxynil and ARM Title 17, Chapter 30, Subchapters 502, 619, 702, 715, 1001, 1006, and 1007, which refer to WQB-7, and to assign a hearing officer to preside over the hearing.
2. In the matter of the adoption of new rules I through X pertaining to storm water discharges. These new rules establish a complete set of storm water permitting requirements and include the new EPA-adopted Phase II rules, which expand permitting to public entities, lower the acreage threshold for construction sites needing permits, and contain other permit requirements.
3. In the matter of the amendment of ARM 17.30.1301, 17.30.1303, 17.30.1304, 17.30.1322, 17.30.1323, 17.30.1341, 17.30.1351, 17.30.1361 and the repeal of ARM 17.30.1332 pertaining to Montana Pollutant Discharge Elimination System Permits. These amendments coordinate the existing permit requirements with the new storm water rules above, and implement the statutory change adopted by the 2001 Legislature that created a notice of intent permit system for construction permits.

4. In the matter of the adoption of new rules I through IX and the repeal of ARM 17.36.901 through 17.36.910 pertaining to Subsurface Wastewater Treatment Systems. This rulemaking is the final update to the entire set of subdivision review and wastewater system rules that govern new subdivisions, county review of subdivisions and problem-solving methods for counties to use for failed wastewater systems. The proposed amendments significantly modify the format of the existing rules as well as update their content; therefore, the existing rules are proposed for repeal and the new rules will replace them. Contained within this rulemaking is an update to the technical circular DEQ-4, which contains design standards for wastewater systems. The update to DEQ-4 is also proposed for adoption in item III.C.5 and in a concurrent Department rulemaking.
5. In the matter of the amendment of ARM 17.38.101 and 17.38.106 to incorporate the 2002 version of Circular DEQ-4 (standards for on-site subsurface wastewater systems) and to replace outdated references to "WQB" with "DEQ." It is also proposed to amend plan review fees for sewer mains and subsurface wastewater systems so that the Department's Public Water Supply Section assesses the same fees as charged by the Department's Subdivision Section for review of the identical type of system.

D. NEW CONTESTED CASES

1. **Derek Brown Construction, Inc., BER 2002-10 ASB**, filed a request for a hearing to appeal a notice of violation and administrative penalty order (#ASB-02-03), for asbestos violations, issued by DEQ. The Board received the appeal on September 12, 2002. Standing Interim Hearing Examiner Tom Bowe will update the Board on this case. The Board may appoint a permanent hearing examiner or decide to hear the matter.
2. **Kwik Way Inc., BER 2002-11 UST**, filed a request for a hearing on September 12, 2002, to appeal three notice of violation and administrative penalty orders (#UST-02-07, UST-02-08, and UST-02-09), issued by DEQ under the Montana Underground Storage Tank Act and Administrative Rules adopted there under, for failure to have inspections completed by the statutory deadlines. Standing Interim Hearing Examiner Tom Bowe will update the Board on this case. The Board may appoint a permanent hearing examiner or decide to hear the matter.

IV. ADJOURNMENT